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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA, ) No. CR 10-0850 CW  
Plaintiff, )  
v. )  
JAVIER GUTIERREZ-CHAVEZ, )  
Defendant. )  
\_\_\_\_\_  
[PROPOSED] ORDER DETAINING  
DEFENDANT PENDING TRIAL

## I. DETENTION ORDER

Defendant Javier Gutierrez-Chavez is charged in a one-count indictment with being a Deported Alien Found in the United States, in violation of 8 U.S.C. §§ 1326(a) and (b). On November 19, 2010, the United States moved for defendant's detention pursuant to 18 U.S.C. § 3142(f)(2)(A) (because there is a serious risk defendant will flee), and subsequently asked for a detention hearing pursuant to 18 U.S.C. § 3142(f). Following a hearing on November 23, 2010, under 18 U.S.C. § 3142(f), and considering the parties' proffer and the factors set forth in section 3142(g), the Court finds that no condition or combination of conditions in section 3142(c) will reasonably assure the defendant's appearance in this case. *See* 18 U.S.C. §§ 3142(e) and (f); *United States v. Motamedi*, 767 F.2d 1403, 1406 (9<sup>th</sup> Cir. 1985).

Specifically, the Court notes the defendant's criminal history, as documented in the

~~PRO P'D~~ ORDER RE DETENTION  
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1 Pretrial Services report, his alleged immigration status, and the fact that the defendant is subject  
2 to an Immigration and Customs Enforcement detainer hold. The Court, therefore, orders that the  
3 defendant be detained pending trial.

The defendant did not request a full bail study at this time, such as an interview by Pretrial Services, but reserved his right to present information at a future bail hearing should his circumstances change. *See* 18 U.S.C. § 3142(f) (a defendant has the right at a section 3142(f) hearing to, with the assistance of counsel, testify, present witnesses, cross-examine adverse witnesses, and present information by proffer or otherwise).

## II. CONCLUSION

10 The Court detains the defendant as a serious flight risk and because no condition, or  
11 combination of conditions, could assure the defendant's appearance in this case. Because the  
12 defendant waived his right to present information under 18 U.S.C. § 3142(f) without prejudice to  
13 his raising any relevant information at a later hearing, the Court orders that the hearing may be  
14 reopened at the defendant's request at a future time.

15 The Court orders that the defendant be committed to the custody of the Attorney General  
16 or a designated representative for confinement in a corrections facility separate, to the extent  
17 practicable, from persons awaiting or serving sentences or held in custody pending appeal. *See*  
18 18 U.S.C. § 3142(i)(2). The defendant must be afforded a reasonable opportunity to consult  
19 privately with counsel. *See id.* § 3142(i)(3). On order of a court of the United States or on  
20 request of an attorney for the United States, the person in charge of the corrections facility must  
21 deliver the defendant to the United States Marshal for a court appearance. *See id.* § 3142(i)(4).

## 22 IT IS SO ORDERED.

**24** | DATED: November 29, 2010

*LBB*

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LAUREL BEELER  
United States Magistrate Judge